

Compiling the Legal Expert Report

An Article by Peter Edmondson

Most vets who act as legal experts initially got involved by chance. My introduction followed a referral visit to a dairy farmer who had a problem with rising herd cell count. He had excellent records and it was clear to me that the introduction of an automatic teat spraying system was responsible for spreading infection in the herd. I suggested that he might want to take some legal advice to see whether he could recoup some of the losses, which we estimated to be in the order of £50,000. Three months later I got a phone call from his solicitor, who asked if I would be prepared to act as a veterinary expert for the case.

Fortunately, I had an excellent instructing solicitor, and a colleague in the practice who had plenty of expert witness experience. I was able to call on this expertise to help me through what appeared to be a rather difficult task. Since then, I have prepared numerous reports for cases and have appeared in the witness box. It's highly enjoyable work, challenging and something that I knew little about before getting involved.

The basis of the expert evidence is the written report. I was aware that there must be a way of improving what I was doing. I decided that it would be sensible to attend a one-day course entitled 'Excellence in Report Writing'. This course was run by LaTouche Bond Solon in Dublin.

Experts and their evidence

Our legal system is based on the adversarial system. This operates on a win/lose principle where the case relies on evidence that must be tested. It is in this capacity that the legal expert comes into his own.

But what is an expert? An expert is someone who has qualifications and experience in a specific discipline who gives independent opinion evidence on the facts of a case. The legal expert must be impartial and independent and the area of expertise must be defined.

Two types of evidence may be produced in a court case. Factual evidence is produced by factual witnesses. These are people who have seen, heard or done something that is relevant to the case. An example of this would be where two cars collide on a narrow road.

An expert, however, would be able to give an opinion as to how the accident may have occurred. The expert would take into account the facts, statements of witnesses, weather conditions, and police reports and as a result of all this data, he would come to an opinion as to why the accident occurred. This is the difference between expert evidence and factual evidence. The expert is offering an opinion and is the only person in court who can do so.

So why do we need experts at all? Experts are required so that the judge can come to a decision in a case. A judge cannot be knowledgeable in all areas, and so he relies on factual and expert evidence in order to be able to assess which party will win the action that is taken.

Instruction

Solicitors ask experts for help. They need to give very clear guidelines on what they require when they instruct experts. Why is the report being written? What purpose is intended? There needs to be clear identification of the issues to be addressed. It is the responsibility of the expert to ensure that these issues are clear. This may require the expert to go back to the instructing solicitor time and

time again to ensure that he/she has a complete understanding of the instructions.

The expert report

After a solicitor has instructed you, the first step will be the preparation of the report. This is your 'evidence in chief' and will be based on information you will have gathered, laboratory results, tests that you or others may have carried out, statements from witnesses involved, literature review and other items. If the case proceeds to court, then you almost certainly will be questioned and cross-examined on your expert report in addition to other issues that may be raised by both sides.

The first point to remember is that the report is intended to assist the judge in coming to a decision. The judge, for all intents and purposes, must be treated as a layman and it is essential that the report is easy for him to follow. The judge has a considerable amount of paperwork to read for every case and an expert report should be easy to follow, concise, with have a clear conclusion.

One can easily understand the frustration of a judge who is presented with a report that contains voluminous numbers of pages that he has to wade through and digest. Expert reports, therefore, must be presented in a way that will assist the judge in identifying the relevant key issues and conclusions in a very short time.

Expert reports must be written with an independent view. If your report is biased towards the person who has instructed you, it will undermine your expert evidence, and your ability to purport to be an expert witness. You must give a fair and balanced opinion based on fact. At times, this makes this sort of work very challenging, especially when you have to identify specific weaknesses or problems relating to the party for which you have been instructed to act. This may mean informing your client that there is no case to present.

The 'Excellence in Report Writing' day began with each of the eleven delegates giving their expectations and concerns that were all listed on a flip chart. After this there was a brief introduction to the legal system, the role of experts and the different sorts of witness and materials that will be presented in a court case. We carried out some practical exercises to differentiate facts from opinion, which is extremely important.

The next step was to split into teams of two. Each delegate had to prepare an expert report. We were given an instruction to answer a specific question. We had to take statements from each other and then had 30 minutes to work in silence to prepare our report. Then we swapped our reports and assessed and marked our partner's report. This was a fascinating exercise and gave us a very good insight in how to check reports for clarity and content. It really challenged your ability to the full. Our trainer went through all the various categories that should have been included, and everyone present had plenty of scope for improvement.

After lunch we then went through the format that is recommended to produce an excellent report. This was followed by all the practical tips that should be used, and advice on common problems.

The excellent report uses a logical template, divided into four sections; introduction, issues to be addressed, investigation and opinion. The report is designed to be concise, with as much material as possible being put into appendices which can be referred to, should anyone so desire. The aim is to keep as much detail as possible out of the main body of the report for ease of reading.

The contents page clearly sets out the different sections of the report and is complete with page numbers. The introduction will include a very short biography of the expert [a full curriculum vitae will be attached to an appendix], a very brief synopsis of the case, a three or four line summary of the conclusions and then details of the appendices and other material.

For ease of reference, each paragraph in the report should be numbered. Double line spacing should

be used throughout so that the judge and the legal teams can write comments or queries easily.

As veterinary experts, we will frequently be referring to technical terms. These should be written in bold, and a definition included after the first time they are used. This definition is then added to a glossary, which is found in an appendix. There must be a clear chronology of the events, to make it easier for the reader to follow what happened when. Some cases can be highly complex, and may have occurred over a protracted period of time.

Expert reports should always be written in the first person singular. The used use of graphics and visual aids are to be encouraged as a picture tells a thousand words.

At this stage we were all fairly competent in what to do for the future. But what about the reports we had produced before the course. Prior to the course, we were all asked to send in a report that we had used in a case that was no longer active. We could change names and details to ensure anonymity. Our trainer then paired us up according to our disciplines and we swapped reports. My opposite number had to deal with my report on milking machines, and I dealt with his report of a medical negligence claim.

We then had to comment on the good points, and offer constructive criticism on how the report would be improved following the section we had just completed on how to prepare the perfect expert report. We used the guidance notes for report assessment which we are now encouraged to use to check all our future reports. I felt quite comfortable about the report that I submitted, but after constructive criticism from my medical opposite number, I now felt that it really needed major surgery. In addition, we had a legal expert review our reports and they explained to me what I could have done to improve the report. Not only were there the negatives, but also it was also nice to get positive feedback on the good points.

The end result

I arrived at the course not knowing what to expect. Having written many reports, I felt that my layout and presentation was fairly good. As experts, we rarely get constructive criticism back from solicitors or barristers, as they are far too busy.

I found this course invaluable and am now completely reviewing how I write and present my reports. I will be setting up a template that I can then use for future cases. I will ensure that any future report is kept as brief as possible and the majority of the heavy material is stuck in the appendices. I will also check each report after it is completed to ensure that I have not overlooked anything.

It is all too easy to forget that the judge, for whom the report is intended, wants a concise and easily accessible document. I am sure that in future, my reports will be much improved on what has been prepared previously. Having been enlightened by my course in report writing, I have decided that it is sensible to embark on a series of courses relating to expert witness work to further improve my skills and also my enjoyment from this type of work.